IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.02.2006

CORAM

THE HONOURABLE MR.JUSTICE D.MURUGESAN

W.P.No.3804 of 2006

01. N.Zahir Hussain
02. V.Jayanthi
03. C.Vidhya
04. T.Kalaimani
05. M.Elango
06. K.Ramasamy
07. S.Senthilkumar
08. N.Rajakumar
09. K.Esakkimuthu
10. K.Gokulakrishnan
11. N.Prabhu
12. A.Ramasubramanian
13. K.Kousalya
14. C.Anand
15. K.Sureshkumar
16. P.Shanmughasundaram
17. C.Srinivasamurthy .. Petitioners

-Vs-

1. The State of Tamil Nadu
   rep. by its Secretary to Government
   Science and Technology Department
   Fort St.George
   Chennai 600 009

2. The Director of Technical Education
   Guindy, Chennai 600 025

3. The Chairman
   Teachers Recruitment Board
   Government of Tamil Nadu
   E.V.K.Sampath Maligai
   DPI Complex, College Road
   Chenai 600 006 .. Respondents

Petition filed under Article 226 of The Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, calling for the records relating to the advertisement given by the 3rd respondent published in Daily Thanthi dated 14.1.2006 for direct recruitment of lecturers in Government Engineering Colleges 2005-2006 only and quash the same in so far as the petitioners are concerned and direct the respondent to appoint the petitioners on regular basis for the post of Lecturers in Government Engineering Colleges in Tamil Nadu without any written competitive examination.

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For Petitioners :: Mr.R.Gandhi
Senior Counsel for
Mr.R.G.Narendhiran

For Respondents :: Mr.R.Muthukumaraswamy
Addl. Advocate General
assisted by
Mr.V.Karthikeyan
Addl. Government Pleader
(Education)

ORDER

The petitioners are all M.E. Degree holders. They have approached this court with a grievance that for direct recruitment to the post of Lecturers, they are also made to sit for the written examination and on the facts of the case, they should be straight-away allowed to appear for the interview without taking the written examination.

2. According to the petitioners, after completing their Bachelor's Degree in the engineering courses in various faculties, they were appointed by Anna University as Graduate Trainees (Lecturers) in various Government Engineering Colleges in Tamil Nadu. Out of 17 petitioners, the petitioners 1 to 10 were appointed by the Anna University in proceedings dated 30.8.2002 and since then they are working in Alagappa Chettiar College of Engineering and Technology, Karaikudi. The petitioners 11 & 12 were appointed on 23.7.2002 and are working in Government College of Engineering, Tirunelveli and the petitioners 13 to 17 were appointed on 22.7.2002 and are working in various engineering colleges in Tamil Nadu. They were appointed on contract basis and in terms of clause 4 of the appointment orders, their experience as Graduate Trainees will be considered for the purpose of future appointment viz., regular appointment whenever the vacancy arises. During the period of Graduate Trainee of three years, the petitioners had qualified themselves for M.E. Degree on part-time basis and now they are eligible to be considered for the post of Lecturers in engineering courses and in terms of clause 4, they should be considered for the appointment without reference to any written examination.

3. Mr.R.Gandhi, the learned Senior Counsel for the petitioners would submit that as the petitioners were appointed as Graduate Trainees and they had gained experience of three years, and when they were appointed they were made to legitimately expect that their experience as Graduate Trainees would be considered for the purpose of future appointment as and when vacancy arises, the petitioners are entitled to be considered in the interview without reference to the written examination. In this context, the learned Senior Counsel relied upon the following judgments of the Supreme Court in "Kumari Shrilekha Vidyarthi etc. Vs. State of U.P. & others (AIR 1991 SC 537)", "Navjyoti Coop. Group Housing Society and others Vs. Union of India and others (1992 (4) SCC 477)" and "U.P.Awas Evam Vikas Parishad Vs. Gyan Devi (dead) by LRs. and others (1995 (2) SCC 326)".

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4. Mr.R.Muthukumaraswamy, the learned Additional Advocate General for the respondents, on the other hand, would submit that by clause 4 of the appointment order the petitioners cannot claim that they shall be automatically called for interview without reference to the written examination, as in terms of clause 7 of the appointment order, it is specifically stated that the said appointment does not confer any right or privilege for a regular, permanent or tenure appointment. Drawing my attention to clause 14 of the prospectus, he would submit that weightage marks will be given to the experience and only to that extent, the petitioners are entitled to the weightage marks after written examination and except the said right, the petitioners cannot have a better right to claim that they should be permitted to attend the interview without reference to the written examination.

5. I have given my due consideration to the above submissions. The only question arises for consideration is as to whether the petitioners could succeed on the ground of legitimate expectation. In a case of advertisement for direct recruitment is made, the procedures for recruitment shall be uniformly applied to all the candidates. Different yardstick in the recruitment process shall amount to discrimination among all the eligible candidates. It is the grievance of the petitioners that after their graduation, they were all appointed on contract basis for a period of three years and by the appointment orders they were made to believe that they will be recruited on permanent basis. In this context, it is relevant to refer to the following clauses in the appointment order dated 30.8.2002 in respect of the petitioners, which read:-

> "4. The experience gained by him/her as Graduate Trainee, in Anna University may be considered for the purpose of future appointment as and when the vacancy arises.
>
> 7. This appointment does not confer any right or privilege for a regular, permanent and tenure appointment. The service rendered under this appointment will not count for Gratuity, Pension and other terminal benefits intended for the regular member of teaching staff of this University."

6. Clause 4 contemplates that the experience gained by a Graduate Trainee may be considered for the purpose of future appointment as and when the vacancy arises. This clause has to be read along with clause 7, which contemplates that the appointment does not confer any right or privilege for a regular, permanent and tenure appointment. By clause 7, it is made clear that whatever experience gained by the Graduate Trainee can be considered for the purpose of future appointment. But there is no conferment of any right or privilege on such Graduate Trainee to seek for regular or permanent or tenure appointment. Clause 4 of the appointment order has to be read along with clause 14 of the prospectus relating to weightage marks which reads as follows:-

> "Weightage marks as detailed below will be given after Certificate Verification. These marks

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will be added to written Examination marks for preparing the final merit-cum-communal selection roster.

I	Teaching experience of two years and above in a recognised college	2 marks
II	M.E.Degree (for Engineering subjects) M.Phil. Degree (for Arts and Sciences)	3 marks
III	Ph.D.(awarded before 31.12.2005)	5 marks

By the said clause in the prospectus, a candidate who applies for the post of Lecturer or Senior Lecturer would be given two marks for teaching experience of two years and above in a recognised college and three marks for a Master's Degree holder in engineering subject. By that clause, for the experience gained by the petitioners, they would be entitled to the above marks. Except the above, the petitioners cannot have any right to claim that they should be considered directly for recruitment without reference to the written examination. When the prospectus prescribes a mode of recruitment, the said mode shall be uniformly applied and there cannot be any deviation, as has been held by the Supreme Court in the decisions in "State of Uttar Pradesh Vs. Chandra Mohan and others (AIR 1977 SC 2411)", in "Ramana Dayaram Shetty Vs. The International Airport Authority of India and others (AIR 1979 SC 1628)", by a Full Bench of this Court in the decision in "P.A.Manickam Vs. The Government of Tamil Nadu rep. by the Deputy Secretary, Home Department, Madras (1984 Writ L.R. 1)" and as well by a Division Bench of this Court in "G.Sumathi Vs. The Director of Medical Education, Madras & four others (1993 Writ L.R.344)". That apart, the scope of judicial review over the prospectus is restricted, as the Court has no power to either alter, amend or introduce a new clause in the prospectus, as has been held in "Miss.Romini Susan Kurian Vs. State of A.P. And others (AIR 1992 A.P. 380)". It will not be within the jurisdiction of the Court either to amend, alter or to add something into the prospectus, as it would be the function of the State in exercise of the powers under Article 162 of The Constitution of India. The eligibility norms, age restrictions and educational qualifications are prescribed in the prospectus as per the policy of the Government consistent with the rules in vogue. The scope of review is restricted only if a clause is contrary to the rules, ex-facie arbitrary, unreasonable and consequently amount to discrimination.

7. The relief sought for in the writ petition is only in the nature of altering the conditions in the prospectus, which cannot be ordered in exercise of the power under Article 226 of The Constitution of India. On the other hand, if the petitioners are allowed to directly appear for the interview, it would amount to discrimination as against the other eligible and qualified candidates as per the prospectus. Such discrimination would amount to arbitrary and unreasonable exercise of power and the same shall not be in conformity with Article 14 of The Constitution of India. As I have held that clause 4 read with clause 7 of the appointment order does not confer any right on the petitioners and there was no question of expectation much less legitimate expectation on the

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part of the petitioners that they would be considered for regular, permanent or tenure appointment without reference to the recruitment process, the Supreme Court judgments relied upon by the learned Senior Counsel for the petitioners on the question of legitimate expectation are not applicable to the facts of the present case.

8. For all the above reasons, I do not find any merit in the writ petition. Accordingly, the writ petition is dismissed. No costs. Consequently, W.P.M.P.Nos.4064 & 4065 of 2006 are also dismissed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

ss

To

1. The Secretary to Government
   of Tamil Nadu
   Science and Technology Department
   Fort St.George
   Chennai 600 009

2. The Director of Technical Education
   Guindy, Chennai 600 025

3. The Chairman
   Teachers Recruitment Board
   E.V.K.Sampath Maligai
   DPI Complex, College Road
   Chenai 600 006

1 cc to Mr.R.G.Narendhiran, Advocate, Sr. 7430
1 cc to Govt. Pleader, Sr. 7464

W.P.No.3804 of 2006

GM (CO)
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